P 21

1940

Department of Land Revenue

h/ 943

DESPATCHED
26 SEP 1940

OFFICE q the Bd of Rev

STATION Madras

His No. 2562

B 7950/38

Dated 19.9.40

Pages in the file Cf 58 pages
NF 23 pages

(SUBJECT.)

Assignment - land (s. Kanara) - Mangal. Thokur Vgl : S. No. 66/10 - Gopalacharya I. N - Petn Orders passed

BOARD OF REVENUE
MADRAS

R.P 638
CFL RJ 2-8-38
B7950

BEFORE THE HONOURABLE THE BOARD OF REVENUE,
LAND REVENUE, M A D R A S.

Darkhast Revision Petition No. /1938.

Between:-

T. N. Gopalacharya, land-lord, Tokur Village and his address for service is "Proprietor, Shri Krishna Villas Coffee Hotel, Tuticorin" .. ..) Petitioner

A N D

Thokur Babu Poojari, snuff dealer at Kinnigoli, Mangalore Taluk ..) Counter Petitioner

Most Respectfully Sheweth:-

The petitioner being highly aggrieved by the order of the Collector of South Kanara, D. Dis. No. 3140/38 reversing that of the Revenue Divisional Officer of Mangalore Taluk, D. Dis. No. 2359/37 in the matter of assignment of plot S. No. 66/10 of Thokur Village in South Kanara District, to the counter-petitioner, begs humbly to seek a revision of the said order for the following grounds:-

ND 25.2.39 ⊕

1. The order of the Collector in confirming the order of the Tahsildar assigning S. No. 66/10 of Thokur to the counter-petitioner is evidently based on a glaring mistake of fact and has resulted in miscarriage of justice.

2. The counter-petitioner who has admittedly no property in the village squatted on S. No. 66/10 in the month of May or June 1936 according to his own admission and began to enclose the same by affecting improvements on the same and by walling in the plot - which is admittedly the direct kumaki and frontage to petitioner's kadim land S. No. 9/5.

3. The petitioner though he is an absentee landlord approached the Tahsildar by an application dated 28- 8- 1936 bringing to his notice of the encroachment by the counter-petitioner on his kumaki and requesting to assign the plot to him, as he could not afford to loose his kumaki.

4. The Tahsildar however assigned the plot to the counter-petitioner without considering the petitioner's objection raised within three or four months of the encroachment and the Collector has confirmed that order stating that the occupation of the plot by the counter-petitioner was over the statutory period of six months and also on the ground that the objection to the encroachment ought to have been made by the mulgeni holder of S. No. 9/5 and not by the mulgar - petitioner.

5. With due respect to the order, petitioner is not able to make out how the objection of the petitioner was considered by the Collector as beyond six months when as a matter of fact the objection has been made within four months of the encroachment as is borne out by the statement of counter-petitioner and the objection petition filed by petitioner.

6. The petitioner also begs to submit that the mulgenidar is entitled to preference over the mulgar only when the contest is between the two, but when the contest is between a stranger and mulgar and when the mulgenidar does not want the land the mulgar is in every way entitled to object and claim the land in preference to the stranger.

7. It will thus be seen that the order of the Collector is based on mistake of facts and has not only deprived the petitioner of his just right as a kumakidar but is also against the clear provisions of the Board's Standing Orders.

8. The petitioner further begs to submit that the counter-petitioner had admitted his unauthorised action and appropriation of petitioner's kumaki and had even given his consent to the assignment of the plot to the petitioner before the Magne Shanbhogue, but strange to say when the Revenue Inspector came for enquiry he retracted his original consent.

9. The petitioner was delayed in filing this revision petition owing to sickness, but looking to the issue involved, and that serious injustice has been done to the petitioner evidently owing to mistake of facts, it is prayed that the Honourable the Members of the Board of Revenue might be pleased to condone the delay and to order the assignment of the plot S. No. 66/10 of Thokur

to the petitioner.

Tuticorin,)
)
8 December 1938)

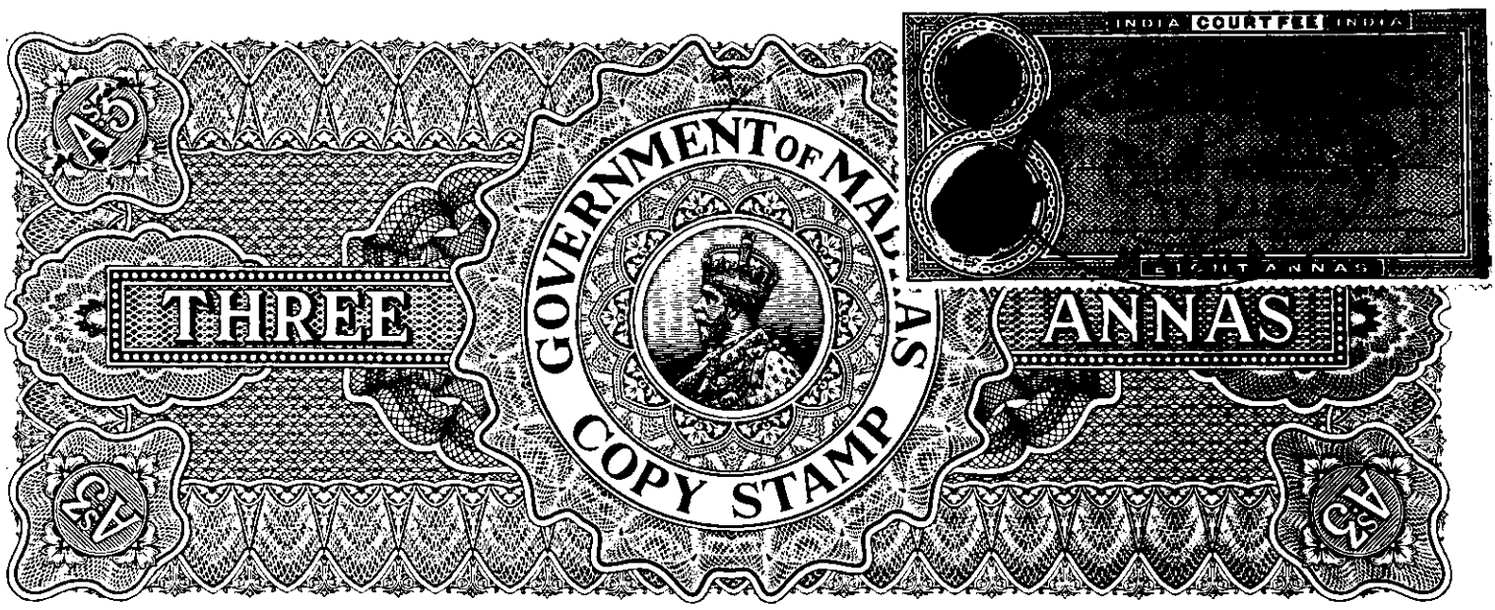
Petitioner.

Enclosures:-

1. Certified copy of the order of the Collector of South Kanara in L.Dis. No. 3140/38. pp 9-11 CF
2. Typed copy of the order of the Rev. Divisional Officer in D.Dis. No. 2359-37 received by petitioner. pp 13-19 CF
3. Order of the Tahsildar in D.R.Case No. 162-1346. pp 21-23 CF

Tuticorin,)
)
8 December 1938)

Petitioner.



D. Dis 3140 - 1938.

Proceedings of the Collector of South Kanara, Mangalore
Dated 27th July 1938.

Sri Rao Bahadur M. V. Vellodi, B.A.

Assignment - Land - Mangalore Taluk - Thokur Village - S. No. 66/10 — Revision petition — Allowed.

Read: 1. Petition dated 16.5.1938 of Babu Poojary residing at Kinnigoli, Mangalore.

2. Mangalore Revenue Divisional officer's N. Dis C. 2944/38-A dated 8.6.1938 and the connected records.

Heard the petitioner and the Respondent through their Vakils Sri Gangadar Das B.A. B.L and Sri M. Ganesh Rai respectively.

Order.

S. No. 66/10, measuring 0-67 acres, of Thokur Village, was assigned by the Tahsildar of Mangalore to one Babu Poojary because it was under his occupation. Babu Poojary had built a house in it and planted a few fruit-bearing trees. This land, however, forms kumaki to kadim warg land S. No. 9/5. The respondent T. N. Gopalacharya

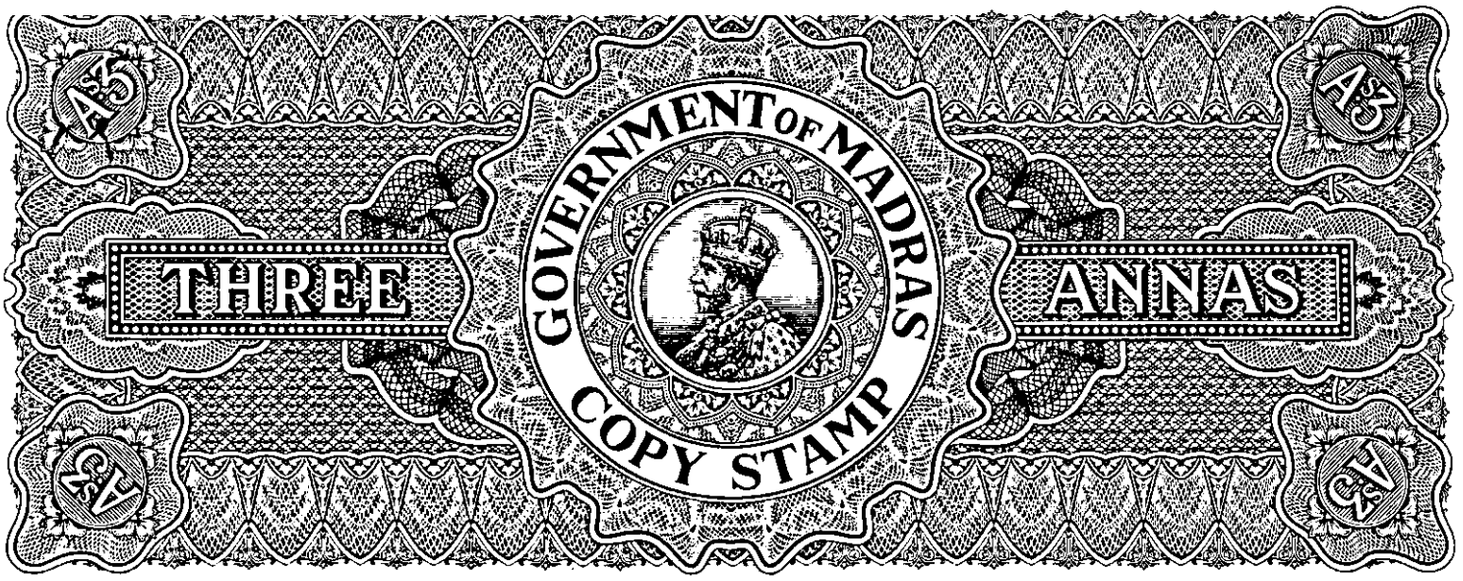
Ac

803

29. 7. 38

Mr M. S. Rao.

A. D'Sequeira



has secured the mulgeni right and therefore appealed to the Revenue Divisional officer to cancel the assignment made by the Tahsildar in favour of Babu Boojary and assign S. No. 66/10 to him. The Revenue Divisional officer apparently wanted to make peace between the two parties and, therefore, divided this into five plots, assigned 4.03 cents to Babu Boojary which comprises the actual extent occupied by the trees and the house and assigned 2.14 cents to J. N. Gopalacharya. ———

The occupation is admittedly over the statutory period of six months and any objection that should be raised is, not by J. N. Gopalacharya, but by the mulgenidarthi Biadad Souza Bai. Inasmuch as she did not do so, she lost her kumak privileges. The whole of S. No. 66/10 has been enclosed by the appellant by a mud wall. There was, therefore, no need for the Revenue Divisional officer to modify the orders passed by the Tahsildar. The Revenue Divisional officer's order is cancelled and the Tahsildar's order restored. ———

27.7.1938 Sd) ab. V. Vellodi

Collector.

1804

29. 7. 38

Mr. M. S. Rao.

A. B. Begum

Total words = 304

170/38
from
Gopalacharya

9. 8. 38

9. 8. 38

9. 8. 38

16. 8. 38

23. 8. 38

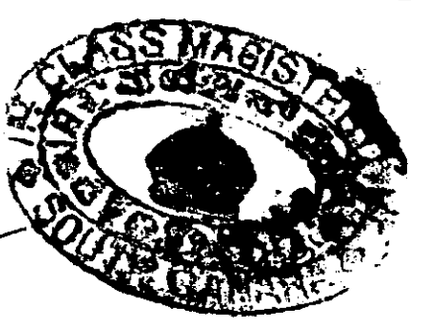
(Errors if any nil)

(True copy on two sheets)

Treasury Deputy Collector
16.9.38

opied by AR Compared by

AR
16/8/38



C.F. 16.

DRAFT FOR APPROVAL.

7.W.S

	Date.	Initials.
When received for fair copying ..	12.12.38	
When copied ..	20/12	
When examined ..	21	
When signed ..		
When despatched.	21/12/38	

SUBJECT :— Assignment - land (S. Kanara) Mangalore Tk - Thokur Vge - S. No 66/10 - Re Gopalachara, T.N - Revn petn - Records called for

READ AGAIN 6/1, dated ——— 19——.

" " ——— " ——— 19——.

READ *ALSO* :—

Cr B No. 7950 From the petr No. ———, dated 8/12-1938. &

" ——— " ——— " ——— " ——— 19——.

" ——— " ——— " ——— " ——— 19——.

Order ~~Resolution~~ Ms. Refer B No. 7950/38-1, dated 23.12.1938.

Forwarded to the Coll S. Kanara for submission of the records - with any remarks which he considers necessary regarding the allegations in the petn which are not clearly dealt with in the records

19/12

20/12

To The Collr of S. Kanara

with a petn & encls in orgl

to be returned with reply.

1-23 CF.

Records of the
R.P.43
B 809

D.Dis.349/39. South Kanara Collector's Office,
Camp: Puttur, 9th February 1939.

From

Sri Diwan Bahadur M. V. Vellodi, B.A.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue, Madras.

Sir,

Assignment - Land - Mangalore Taluk - Thokur village - S.No.66/10 - Gopalacharya T.N. - Revision petition - Reported - Board's Refce.No.3.795/38-1 dated 30.12.38.

b25 CF.

***

I resubmit herewith the revision petition of T.N. Gopalacharya together with its enclosures received with the Board's reference quoted above.

p 25 (x)

2. The petition is against my order D.Dis.3140/38 dated 27.7.38 cancelling the Revenue Divisional Officer's order D.Dis.2359/37 dated 10.12.37 directing the assignment of a portion of the plot S.No.66/1 of Thokur village to the --- petitioner in modification of the Tahsildar's order A.R.162/46 dated 15.2.37 assigning the whole plot measuring 67 cents to the counter-petitioner.

p 33-36 (P)

b 7 9 (Q)

p 25 (Y)

3. I have given reasons in my order for the annullation of the Revenue Divisional Officer's order and the restoration of the Tahsildar's order. The contention of the petitioner in para 5 of the petition is of no avail. His objection petition was received by the Tahsildar on 30.8.38. The Shanbhogue no doubt recorded the counter-petitioner's statement on 29.10.36 to the effect that he had been in enjoyment of the plot since the hot season of 1936; but in his subsequent statement dated 24.12.36 recorded by the Revenue Inspector at his enquiry, the counter-petitioner contended that he had occupied the plot in February 1936. The Revenue Inspector supported it and

p 3 CF.

p 51-52 (Q)

reported on 25.12.36 that the occupation was about 10 months old at the time. Even at the subsequent enquiry held in connection with the petitioner's appeal to the Revenue Divisional Officer in which the same contertion was raised it was found that his objection was not in time.

4. The connected records as noted in the margin are enclosed.

(X) (1) Hazur file D.Dis.3140/38 dated 27.7.38.
(P) (2) Mangalore Rev.Divl.Officer's file D.Dis.2.59/37 dated 10.12.37.
(Q) (3) Mangalore Taluk D.R.162/46/36-37.

for Collector.

Rt/10.2.

11.2.39.

24

7.W.S

DESPATCHED
15 MAR 1939

Assignment: land (S.kanara Mangalore Tk. - Thokur Vge - S.No. 66/10. Gopalacharya T.A Revn. - Petn - further report called for.

Cont to 14.3

14.3

15/3

Pp 27-28 CF B-809. from the Coll of S.kanara D.dis 349/39 dy 9-2-39. &

Refce B 7950/38-2 dy 14.3.39

The Coll is requested to report definitely when the Bdi's petr purchased the mulgeni right of the Kadim land S.No. 9/5 in the court sale. His attention is invited to the report of the R.I at pp 55-56 of the taluk file OR 162/46 dy 5.2.39 and to note ii of para 10-1 of S.O No. 15-40 and he is requested to report why kumaki lands are generally assigned to 'Mulgeni dars' and not to 'mulgars'.

fine file 13

15/3

hw 8/3

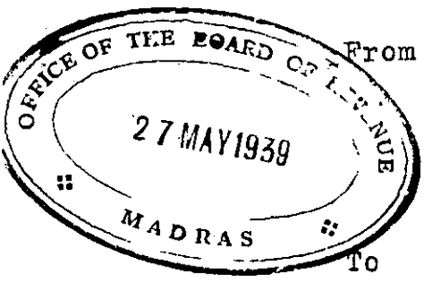
11/3/39

To the Coll of S.kanara with records as per list returned

Records as per list
R.P 84
B 2636

D.Dis.No.1930/39. South Kanara Collector's office,

Camp Kasargod, 23rd May 1939.



From

Sri Diwan Bahadur M. V. Vellodi, B.A.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

Sir,

Assignment - Land (South Kanara) - Mangalore Taluk - Thokur village - S.No.66/10 - Revision petition - Reported.

cf Board's Ref.B.7950/38-2, dated 14.3.1939.

*****

The petitioner purchased the muli right in court auction on the 29th July 1935 as would be clear from the Court certificate of sale produced by the petitioner with his petition to the Board received by me with Board's endorsement, N.Dis.B.2367/39, dated 17.5.1939.

2. As regards the point raised by the Board as to why kumaki lands are generally assigned to 'mulgenidars' and not to 'mulgars', I invite the attention of the Board to its Proceedings No.260, dated 2.10.1907 in which the question was discussed while amending the darkhast rules applicable to this disttrict. Kumaki is Government waste land within 100 yards of kadim wargs i.e., wargs formed prior to Fasli 1276 (1866-67) and over which the wargdar enjoys free of charge certain privileges of grazing cattle, cutting firewood and trees, collecting leaves &c. for his own agricultural and domestic purposes. It is one of the essential incidents of kumaki that it can only be alienated with the warg to which it is attached. Mulgeni leases which are peculiar to this district are perpetual leases under which the land is left to the permanent enjoyment of the mulgenidar ----- reserving only a fixed rent to be paid to the mulgar. As long as the rent is paid the mulgeni tenant cannot ordinarily be ---

evicted from the land. Since kumaki land is intended as an aid to the cultivation of the adjoining warg land, it was considered essential that the mulgenidar should be given preference over the mulgar, who, as stated above, is entitled only to the mulgeni rent and nothing else.

3. The connected records as noted in the margin are enclosed.

1. Huzur D.Dis.3140/38, dated 27.7.38.
2. Mangalore Rev.Divl.officer's D.Dis. 2359/37, dated 10.12.37.
3. Mangalore Taluk D.R.162/47, dated 5.2.37.
4. Court certificate of sale, dated 29.7.35 in R.E.P.167/35 on the file of District Munsif of Karkal.

For Collector.

25.5.38

M.D'S.23/5.

OFFICE OF THE REVENUE BOARD
11 NOV 1939
MADRAS

Thokur, Dt. 6-10-39.

P. Gopala Acharya,

Thokur;

Thokur Village. Post Mallamgadi.

CFLR 10-8-

R.P 25/9/38
B 5573

The Collector,

South-Kanara District, Mangalore.

Sir, Subject:- Revision petition dated 28- 6-12-38 on the order of the collector of South Kanara Dist.No. 5140/38 by P.N.Gopala Acharya on assignment of plot No.60/10 of Thokur Village. to Babu Pujari-calling for sale-certificate, and delivary receipt. Salecertificate submitted on 4-6-39 to Revenue Board.

4b-4b-f I beg to submit herewith the Delivary receipt in qu: question. Though the case was applied for to the Munsiff's court Karkal long ago I could get it only ~~xx~~ a few days back.

Hence delay which I beg to state may be excused.

I beg to remain,

Sir,

Your most obedient servant

ಪಿ.ಎನ್.ಗೋಪಾಲ ಆಚಾರ್ಯ.

3(12)
The main file is with Secy. may be added to the file as & as it is recd.
6/6

XN 6/6
Returned.
The certified Copy should be stamped and submitted to the Board, if called for, in the matter direct reference, by pending in their office.

for Collector

6/10/39

6/10/39

F.W.S.

Assignment - Land (S.Kanara) - Mangalor Tk. - Tokur Vge - S.No.66/10 - Revn petition from T.N.Gopalacharya.

Petition from Sri T.N.Gopalacharya dated 8-12-38

From the Collr of S.Kanara D.Dis No.1930/39 dated 23-5-39

Reference B.7950/38-3 dated 27.5.39

The petition cited above from Sri T.N.Gopalacharya is against the order of the Collr of S.Kanara No.D.Dis 3140/38 dated 27-7-38 cancelling the R.D.O's order No.D.Dis 2359/37 dated 10-12-37 ~~directing the assignment of a portion of the plot, S.No.66/10 of Tokur village to the petr~~ and restoring the order of the Tahr assigning the whole of S.No.66/10 of Jhokur Village measuring 67 cents to the counter petr. The petitioner requests that the Collr's order may be set aside and that the whole land may be assigned to him.

2. The Board has perused the connected records. ~~It observes that the field in question S.No.66/10 is kumaki to the kadim holding S.No.9/5 belonging to the petr. The petr's muli right, that is, ownership of S.No.9/5 is not disputed.~~ Kumaki rights go with the kadim land to which they are attached.

3. It is well established that, for assignment of kumaki lands the mulgenidar has the first preference and that the muldar (wargdar), that is, the owner of the kadim land has the next best claim. From the sketch at page 17 of the R.D.O's file D.Dis No.2359/37 dated 10-12-37, the Board observes that

NOTICE (1).—The Post ... damage in the case of inland ... insured.

(2).—The special condit... which will be found in the curr... Guide are binding upon every ... virtue of rules prescribed unde...

S.No.9/5 is a kadim land which has kumaki rights over S.No.66/10 and that the other adjoining lands are either assessed wastes or hosagames, that is, later assignments which are not entitled to kumaki rights. S.No.9/5 is the kadim land of the petr while S.Nos.76/10,8/1, 8/3 and 66/8 are his hosagames. If S.No.66/11 were poramboke land, kumaki rights would not extend across and beyond it to S.No.66/10 but actually S.No.66/11 is assessed waste through which a footpath runs. It is also partly the kumaki land for ~~the petr's land (S.No.9/5). It is therefore indisputable that S.No.66/10 is kumaki land of S.No.9/5.~~

4. The Mulgenidar of S.No.9/5 is Piad Souza Bai. S.Nos. 76/11 and 66/9 are her hosagames. She has obviously forfeited her kumaki rights and her claim for the assignment of S.No.66/10, on account of her failure to bring the occupation of the kumaki land to the notice of the authorities within a period of not exceeding 6 months. It is undeniable that the petr will be entitled to the assignment of the kumaki land unless he has forfeited his preferential claim by similar failure.

5. When the counter petr, Babu Poojari was first examined by the shanbogue on 29-10-36, he said clearly that he had occupied the kumaki land only during the preceding summer. But when he was examined later by the Revenue Inspector on 24-12-36, he said that he had been occupying the plot from February 1936. ~~The Board observes that in~~ the first statement, he did not

say anything about the mulgenidar having forfeited her kumaki rights because she had not objected within 6 months of the occupation nor did he say anything in ~~the first~~ that statement about the transfer of registry not having been ordered in favour of the petitioner. The counter-petitioner does not appear to be a literate person as will be seen from the statements recorded from him by the shanbogue and the R.I, It is quite inconceivable, therefore, that such a person gave the name of the English month of February. ~~In the opinion of the Board it is quite~~ Obviously that the second statement recorded by the R.I appears to have been ~~was~~ largely prompted by leading or suggestive questions put by the R.I. As pointed out by the R.D.O, there is no allegation that the first statement was not correctly recorded by the sanbogue or that it was not voluntarily given. In that statement, he says quite definitely and clearly that it was in a summer month that his occupation commenced. Feby is not a summer month. The Monsoon breaks out in S.Kanara in the first week of June. Only April and May would really be described as summer months. ~~The fact that transfer of registry had not been ordered in favour of the petr or his father was not urged is not sustainable, as it is without substance.~~

6. From the R.I's report dated 25-12-36, it is seen that it was one Bhoja Rao, the mulgenidar of S.No.66/8, who encouraged the counterpetitioner, Babu

Babu Poojari, to occupy the plot S.No.66/10 ~~xxxxxxxxxxxxx~~ giving him to understand that the plot was included in his (Bhoja Rao's) mulgeni lease. When the mulgenidar, Piad Souza Bai was examined on 15-12-36, she said that Babu Poojari's occupation had commenced about 4 or 5 months previously. When the Shanbogue examined the petr's brother on 19-10-36, the latter stated that the encroachment had been made 4 months previously, ie., in about June 1936. In his application dated 28-8-36 in which the petr brought the occupation to the notice of the authorities and claimed the land for himself, he stated that the occupation had commenced about a month previously, though, in his petition to the Board, he says ~~he is perhaps more truthful when he says~~ that the occupation had commenced about 3 or 4 months before he objected. ~~In the opinion of the Board, the evidence makes it quite clear~~ seems to show clearly that the occupation of the plot by Babu Poojari did not commence earlier than April 1936 and that, as the petitioner brought the occupation to the notice of the authorities within 6 months thereafter, he did not forfeit his preferential claim for the land. The R.I's statement that the occupation had commenced about 10 months before 24-12-36 ~~was~~ appears to have been based only on the improved version which was recorded from Babu Poojari on that date. ~~For the petr's objection petition was dated 28-8-36, the Board and the counter petitioner had to go back to a date more than 6 months earlier and therefore pitched upon February. The Board also observes that~~ The R.I. could not

have determined by looking at the cocoa-nut plants or the walls enclosing the land or ~~x~~ the well, whether they were 8 months or 10 months old on the date when he recorded the counter petitioner's statement.

6. The Collr is requested to have a notice served on the counter-petitioner stating the case and calling on him to show cause within a ~~time to be specified by him~~ fortnight ⊕ why the assignment of S No.66/10 ordered to be restored to him in Collr's Proceedings No.D.Dis 3140/38 dated 27-7-38 should not be cancelled under B.S.O. No.15-18 as being grossly inequitable and in excess of the authority of the Collr in as much as the muldar was entitled to preference and to have the whole of S.No.66/10 assigned to him. Any written representations that ~~he~~ the Collr may receive from the counter petitioner should be submitted to the Board with his remarks.

⊕ from the date of service of the notice

To The Collr of S.Kanara with a petition and records as per list at page 32 c.f.(items 1-3) to be returned with reply.

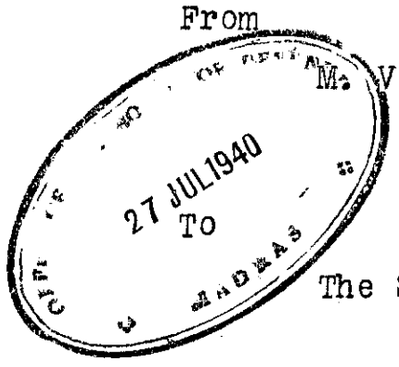
27/5 18
27/5 27.5.40

S. 27-5-40.

B3 14 2917

D.Dis.No.3719/40. South Kanara Collector's Office,
Mangalore, 24th July 1940.

From



M. V. Subrahmanyan, Esq., M.A., I.C.S.,
Collector of South Kanara.

RP 163 and B 3354

The Secretary to the Board,
Land Revenue & Irrigation,
M a d r a s.

Sir,

Assignment - Land - (South Kanara) - Mangalore Taluk Thokur village - S.No.66/10 - Revision petition from T.N. Gopalacharya - Further report - sent.

****

pp 47-51 cf. Board's Refce.No.B-7950/38-3, dated 27.5.1940.

****

The counter-petitioner, Babu Poojary was given a notice in which the case was stated on the lines ordered by the Board in its Refce. quoted above and he was called upon to show cause why the assignment of S.No.66/10 ordered to be restored to him in the Collector's Proceedings, D.Dis. 3140/38, dated 27.7.1938 should not be cancelled under B.S.O. No.15-18. He has submitted the enclosed written objection. pp 55-59 cf

pp 25 cf (X) pp 45-

2. His argument is that what he stated before the Shanbhogue in his first statement, dated 29.10.1936 was that he was in occupation of the plot from last 'Aregala' a term signifying a season other than the rainy season which is termed 'Maryala' in tulu. As regards his statement recorded by the Revenue Inspector on 24.12.1936 he says that, being illiterate, he must have mentioned only the Tulu month corresponding to February and that the Revenue Inspector must have put it down as February for his convenience. The only important point which arises is whether 'February' also can be construed to be a summer month covered by the word ----- 'besige', which was clearly used in the statement recorded

114' 423 (R)

pp 51 52 (9)

by the Shanbhogue. The year is generally divided into 3 parts of 4 months each according to the normal conditions of weather viz.,

(1) Rainy weather from June to September,

(2) Winter from October to January and

(3) Summer from February to May.

The cold weather however closes only in February according to the Statistical Atlas of the district for 1936. Thus though the counter-petitioner's argument is not clinching, it cannot be said to be altogether without point.

3. The counter-petitioner wants some neighbours to be examined on his behalf. I do not see any necessity for this at this stage.

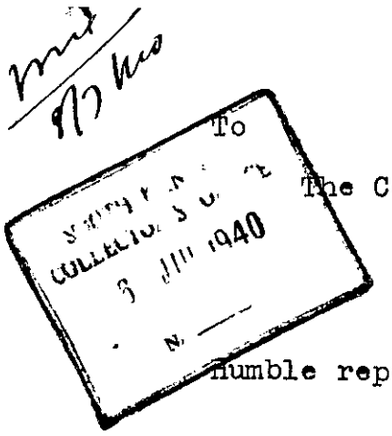
4. The enclosures to the Board's Refce. as detailed in the margin are returned.

1. Revision petition of T.N.Gopalacharya to the Board, dated 8.12.38.
2. Taluk D.R.162/46, dated 5.2.37.
3. Mangalore Revenue Divisional Officer's D.Dis.2359/37, dated 10.12.37.
4. Huzur D.Dis.3140/38, dated 27.7.38.

25.7.40

For Collector.

25.7.40



To

The Collector,

South Kanara, M A N G A L O R E

Humble representation of

Babu Poojary, N/o Subbu Poojary, Residing at Thokur Village, Mangalore Taluk.

The petitioner above named, with reference to the proceedings of the Collector, South Kanara, dated 8-6-40 Ref - A1 - 3719-40, regarding assignment of land S.No. 66/10 of Thokur Village, Mangalore Taluk, calling upon him to show cause why the assignment of S.No 66/10 ordered to be restored to him in Collector's proceedings D.Dis 3140/38 dated 27-7-38 should not be cancelled under B.S.O No 15 - 18, ~~the petitioner~~ begs to submit as follows:-

That the order of the Collector assigning the plot S.No 66/10 of Thokur Village in D.Dis 3140/38 dated -- 27-7-38 is quite within his competence and authority, is -- perfectly in accordance wit i the procedure laid down in B.S.O. and is the most equitable and benign order under the special circumstances of the case.

2. That even if the Collector had slightly -- deviated from the general rules pertaining to the assignment of land, still his order in this case is perfectly justifiable as he is competent under B.S.O 15 to depart from the general rules of Dharkast in special cases when considerations of - equity require it and there cannot be a better case where - equitable principles can be applied with greater force than this special case.

3. That the petitioner before the Hon. Board of Revenue, Sri. Gopalacharya, has forfeited his preferential

claim like the Mulgenidar of S.No 9/5 (Piad Souza Bai) by his failure to point out the adverse possession of the present petitioner, Babu Poojary, within the statutory period of 6 months.

4. That even according to the general principles pf assignment the said Gopalacharya has no preferential claim as he is only the Mulgar of the property S.No 9/5 and if at all, the Mulgenidar, Piad Souza Bai, ought to have had the preferential claim, but she has not preferred to do so.

5. The plot S.No 66/10 cannot be said to be contiguous to the plots belonging to Gopalacharya as they are seperated from it through a road S.No 66/11 and a water channel which together will be about 12ft in width. In fact SNo 66/10 is a compact block by itself and it cannot be -- added on and made a compact block with the plots belonging to Gopalcharya.

6. It is to be admitted that the present -- petitioner is illiterate and he had stated before the Shanbogue on 29-10-36 that he had occupied the Kumki land only during the preceeding summer. The Hon Board seems to restrict Summer to the months of April and May. No doubt, they are the Summer months. But as the Hon Board has pointed out that the petitioner could not have mentioned the month of February as he is illiterate, he begs to submit that he could not have stated " Summer" in English to the Shanbhogue in his statement dated 29-10-36. All that he told the Shanbhogue was that he was in occupation of the said plot from last " Aregala" a word signifying a season other than the rainy season. In -- South Kanara, popularly, the villagers have only two seasons in Tulu : " Mariala" (Rainy Season) and " Aregala" (other than the rainy season) and people, especially the uneducated, by saying Aregala mean the months from November to May. Thus the petitioner had stated before the Shanbogue in Tulu, the only language known to him, that he commenced his occupation in Aregala which might have been written in Kanarese as -- Besigekala, which cannot be restricted to mean Summer, specially

when it comes from the uneducated villagers, but in its general sense even this word means a season other than the rainy season and so it cannot be restricted to the months of April and May alone as pointed out by the Hon. Board of Revenue. Likewise, the petitioner must have stated before the Revenue Inspector on 24-12-36 a month in Tulu corresponding to the month of February and so the Revenue Inspector must have put it down as February for his convenience. The petitioner humbly prays that the interpretations of these ~~things~~ words could be kindly considered and submits that for the technical mistakes and for his misfortune of being uneducated he should not be deprived of his holding in which he has effected considerable improvements to the extent of about Rs 1050/-

7. The fact that the Mulgenidar, Piad Souza Bai stated to the R.I. on 15-12-36 and Gopalacharya's brother to the Shanbogue on 19-10-36, that the present petitioner, Babu Poojary, commenced his occupation of the plot S.No66/10 about 4 or 5 months prior ~~the~~ to their examination does not lead to the inference that he must have occupied it somewhere in June for the following reasons:-

(i) In the first place both of them are interested in Gopalacharya: Piad Souza Bai is his own Mulgenidar and as such she dare not go against her land-lord. The other man is his direct brother and so much reliance cannot be placed on their statements.

(ii) If the petitioner had commenced his occupation in June as pointed out by the Hon. Board, certainly the -- petitioner would not have stated that he was in occupation of the plot from summer but would have said that he was -- doing so from the commencement of the rainy season.

So for the above mentioned reasons the statements of those people should not be considered and any order based on such highly interested statements is liable to be modified

8. The petitioner respectfully begs to submit

that there is not much evidence in this case to show that the said Gopalacharya had brought his claim over the plot within the period of limitation except the evidence of the two interested witnesses and certain words which, unfortunately for the petitioner, were not considered in the light of their general and comprehensive meaning. Besides the R.I. had acually visited the locality a number of times and he was more than convinced by internal evidence such as, cocoanut trees, construction of house etc., that the present petitioner was in occupation of the plot about 10 months before 24-12-36.

9. The petitioner further begs to submit that he is a poor Billava, utterly illiterate and is completely at the mercy of literate people. The Shanbhogue and the Potail of the Village are very great friends of the said Gopalacharya and it is mainly due to the Shanbhogue and the Potail that the petitioner is put to such great hardship.

10. Now it is nearly 5 years since the petitioner is in occupation of the plot. In the course of these years he had constructed a sufficiently big tiled house, costing about Rs 650/- a well costing about Rs 150/- and other improvements worth about Rs 250/- and humbly.begs to submit that there cannot be a greater hardship to a poor villager who had invested all the hard savings of his life time even at the risk of scanty food and clothing to himself and his poor family consisting of small children, than to evict him at this stage and drive him out of his holding and expose him to the clemencies of nature and to the magnanimity of the benevolent.

11. Lastly he begs to submit that some of the independent and respectable neighbours could be ordered to be examined regarding the occupation fo the said plot by the present petitioner. The following neighbours will be in position to enlighten Your Honour in this matter.

1. Kujumba Moolya 2. Iru Settigara. 3. Ammu. 4 Thukra -- 5. Thoma. 6 Neelu Moolya and 7 Peelu who are the immediate

neighbours of the petitioner. There are others who are the lagthi- vargadars who often pass through the road S.No 66/11 and they are 1. Ahmed Syyad Asadi, Hakim Thokur Village, 2. T.N.Subba Rao 3. T.Laximinarayan Rao 4.Thokur guthu -- Lingappa Shetty 5. Sesha Shetty, temant of one Gururajacharya and others.

12. It is humbly submitted that if at all Rajacharya, brother of Gopalacharya, ought to have claimed the plot because in accordance with the family partition between the brothers the nearer plots to S.No 66/10 have fallen to his share,

Under these circumstances it is humbly submitted that Your Honour may be pleased to go through all the facts stated above and after holding a local inspection and hearing the petitioner, if need be, before passing orders, may be pleased to confirm the order of the Collecter in D.Dis 3140/38. dated 27-7-38 as it is a perfectly legal and well-considered order having due regard to the equitable principles.

Mangalore.
4-7-40

Left Thumb Impression of Babu Poojary.

DRAFT FOR APPROVAL. J.W.S.

	Date.	Initials.
When received for fair copying ..	19/9	JB
When copied ..		
When examined ..		
When signed ~~OKP~~ 26/9/40		
When despatched.		

SUBJECT :— Assignment - land (S. Kanara) - Mangalore Tk - Thokur Vge - S.No-66/10 - R Gopalacharya - T.N - Petn - Orders passed -

READ AGAIN _____ dated _____ 19____

" " _____ " _____ 19____

READ *ALSO* :—

No. Petn from ~~the~~ T.N.Gopalacharya, ~~No.~~ _____, dated 8-12-1938 — 2 to all

" _____ from The Coll^r of S.Kanara D.Dis No. 3719, 24-7-1940 — 2 to all

" Representation of Babu Poojary to the Coll^r S.Kanara dated 4.7.40 — 2 to all

~~Order~~ Resolution ~~Rout.~~ Ms. No. 2562, dated 19.9.1940

JS-NF

June 15/15/40

The Petn from Sri T.N. Gopalacharya is against the Coll's order D.Dis 3140/38 of 27.7.38 cancelling the R.D.C's order No.D.Dis 2359/37 of 10.12.37 and restoring the order of the Tahsr assigning the whole of S.No. 66/10 of Thokur Vge, measuring 67 cents. to the respondent, Babu Poojari.

2. The petr alleges

i) That Babu Poojari occupied ~~only in May or June 1936~~, the land in question which is kumaki to his land S.No. 9/5, only in May or June 1936;

and ii) That he brought the encroachment of the respondent

No. 195

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no fee is due. Rs. As. Date stamp.

Received a registered * _____

addressed to _____

* Write here "letter," "postcard," "packet," "parcel," etc., with the word "insured" before it when necessary.

Initials of Receiving Officer.

Insured for Rs. (in figures) _____ (in words) _____

Insurance fee Rs. _____ As. _____

Weight _____ Rates _____ Tolas _____ (in words).

Name and address of sender.

H Insured.

to the notice of the revenue authorities on 20.8.36 ie within the statutory period of 6 months,

and iii) that the whole land should be ordered to be assigned to him

4- The Board has examined the connected records and heard the parties on the subject ~~& observed facts~~

i) that the occupation of the plot by Babu Poojari did not commence earlier than April 1936 and ~~(ii)~~ that as the petn brought the occupation to the notice of the authorities within 6 months thereafter, he did not forfeit his preferential claim for the land.

In response 3. to a notice served on the respondent requiring him to show cause why the assignment should not be cancelled for these reasons the respondent ~~has represented~~ state

i) that he ~~took~~ occupied the land in February 1936 and ii) that he has put up a tiled building worth Rs 650, that the well costs about Rs 150/- and that there are other improvements worth about Rs 250/-.

4. X

Ex 2 to 18 NF

X

to 21 NF.

p23NT

The Bd is of the opinion that ~~the respondent's statement about the improvements made by him is a gross exaggeration. He the respondent seems to have~~

19 ~~taken up the plea to advise him to develop his holding, and that~~ (C ~~must be considered~~) the question of possible hardship to the respondent should not be allowed to affect the decision in a case like this where a stranger has trespassed upon ~~the~~ kumaki land. In the first statement before the Karnam, the respondent said that he had no objection to the land being assigned to the petr., with whom he was evidently then prepared to come to terms and be a tenant under him.

(B)

5. In these circumstances, the Bd ~~decides under R.S.C.~~ cancels ~~1945 Mad 18, that~~ the Collr's order D. Dis 3140/38 dt 27.7.38 ~~cancelling the R.D.O's order No. Dis 23-7/37 dt 10.12.37 be set aside and~~ directs that the land measuring 67 cents ~~may~~ be assigned to the petr, T. N. Gopalacharya.

6. The petr and the respondent are referred to

Mr KNN q S. Kanara for orders
on the petns. cited above.

hn
14/9.
KA
1895

18/18/9

To The coll q S. Kanara with
records as per list at p 32 c

To Sri T.N. Gopala Charya, Land
Lord, Thokur Uge, parab
Haliangadi Post
Mangalore Tk.

To Sri Babu Poojari, parabo
N/c Subbu Poojari
Thokur Uge,
Haliangadi Post,
Mangalore Tk

26.9.

19/9

19/9

AS LR

PETITION NOTE FILE.

Subject.- Assignment - Land (S.Kanara) Mangalore Tk - Thokur
SNo - 66/19 - Gopalacharya T.N - Revn petn
Date of Receipt. 13.12.38.

NOTE.- If the answer to any of the questions noted below admits of a simple and direct answer this answer should be noted against the question. Where the answer is in doubt and requires discussion and orders the words 'see below' should be entered instead and the question dealt with in the body of the Office Note under the numbered heading which will be repeated for the purpose.

1. Nature of Petition? (Original, appeal or revision) — Revision petition

2. Under what statute, Law or other provision is it preferred? — B.S.O 15-11

3. In cases of appeal or revision authority on which original (and lower appellate) orders were passed. — B.S.O 15-11

4. Under what authority does the Board entertain this petition? — B.S.O 15-18

5. Stamps.- (Quote authority in every case)
   (a) Is the petition with enclosures properly stamped? — Yes. The petition need not be stamped. B.S.O 15-15. Encls have been properly stamped - B.S.O - 172 - 6 Note(1)
   (b) If exempted from Stamp Duty state authority?

6. Limitation.-
   (a) Is the petition in time - State time allowed - with authority. — Yes. 3 years B.S.O 15-18
   (b) If the petition is time-barred --
      (i) Is there authority to condone delay?
      (ii) If so state here any grounds adduced for condonation.

7. Miscellaneous.-

Are there any other technical points for consideration?

If so, state them briefly.

Appl-11 CF

From the petition and the Adl's order, it is observed that S. No 66/10, measuring 67 cents of Thoker use was assigned by the Tahr of Mangalore to the counter petr because it was under his occupation. This land however forms kumaki to kadim warg land S. No 9/5 belonging to the petitioner. ~~He~~ ~~the petitioners has acquired the said right~~ and therefore appealed to the R.D.O to cancel the assignment made by the Tahr and ass S. No 66/10 to him. The R.D.O ~~apparently made~~ ~~to suit the case and is~~ divided the plot into two parts and assigned 43 cents to the counter petr and the rest to the petr. The counter petr appealed to the Adl and the Adl restored the Tahr's order. The petr has therefore approached the Bd.

The allegations of the petr are

1) that the counter petr who has admitted no property in the village squatted on S No. 66/10 in the month of May or June 1936 according to his own admission and bega to enclose the same by effecting improveme on the plot which is admittedly the direct kumaki and frontage to the petr's kadim land.

2) that the petr had raised the objn within ~~3 or~~ 4 months of the encroachm ~~that period is within the shorter period~~

signatories.

3) that the mulgenidar is entitled to preference over the mulgar only when the contest is between a stranger and mulgar and when the mulgenidar does not want the land the mulgar is in every way entitled to object and claim the land in preference to the stranger

and 4). that the counter petitioner had admitted his unauthorised action and appropriation of the petrs kumatti and had even given his consent to the assignment of the plot to the petr before the Nayna Shanbhogue but when the Revenue Inspector came for enquiry, he retracted his original consent.

The petr therefore prays for the cancellation of the Coll's order & Dis 3/40/38 d/ 27. 7. 38.

The Coll's order does not give a detailed report to meet the allegations of the petr. The records may therefore be called for and examined.

16/12

To AS(LR).

Draft submitted

19/12

Issued as Bd's refee B 79:70/38-1 dt 23.12.38.

B.809. From the collr, S. Kanara D dis 349/39 dt 9.2.39

To ASC(R)

S.No. 66/10, measuring 67 cent of Ikeri Vge, Mangalore taluk was assigned to by the Tahr. of Mangalore to one Babu Poojari. This land forms kumaki to kadim land S.No. 9/5. The Bd's petr (T.N. Gopalacharya) who has secured the kuli rights appealed to the R.D.O to cancel the assignment made by the Tahr and requested that the land might be assigned to him. The R.D.O modified the Tahr's order and directed the assignment of 43 cents to Babu Poojari and the remaining extent of 24 cents to the Bd's petr. The extent of 43 cents comprises the actual extent occupied by the trees and the house of Babu Poojari. Babu Poojari preferred a revision petn to the collr who cancelled the R.D.O's order and directed that the whole land (67 cents) should be given to him. T.N. Gopalacharya has now come up to the Board on revision. His contentions are

1) that Babu Poojari occupied only in May or June 1936 the land in question which is kumaki to his land 9/5

2) that the Bd's pets brought the encroachment to the notice of the revenue authorities on 28-8-36 within the statutory period of 6 months.

and 3) that the Bd's order argument that the objection to the encroachment ought to have been made by the mirasi holder of S.No 3/5 and not by the petr, who is only the mulgar, is not ok

He therefore requests that the land should be assigned to

Contentions (1 and 3) On 29-10-36, the Chairman recorded a statement from the counterpetr that he had been in enjoyment of the plot since the last season of 1930. In his subsequent statement dated 24-12-36, recorded by the R.I., he contended that he had occupied the plot in Feb 1936. In his report dated 25-12-36, the R.I stated that the plot was encroached upon by the counterpetr by constructing a house, digging a well & by planting 14 coconut trees about 10 months ago. He also recommended the assignment of the plot to Baba Poojari since he has made improvements on the land. In his report dated 16-6-37, the R.I stated that the Board's petitioner had no preferential right over the plot as he merely

Pt 13 of (P)

purchased and the mulgeni right of the
latter land S. No. 715 and that the
respondent Pandurang Bala had lost
his kumaki privilege as he did not
fulfil the conditions of the lease.
Hence the first contention
also is without good.

Contention (3) According to note (ii) of para
7 of G.O. No. 1-A, the mulgenidar or the mul
shall be liable to forfeit the preferential
claim in favour of the unauthorised
occupant of kumaki if he has failed to
bring the occupation to the notice of the
authorities for a period of more than
six months unless it can be shown
that the occupation was without his
knowledge. In the present case, as the
mulgenidar (respondent) did not file suit within 6 months
her kumaki privilege. As regards the
mulgenidar it was not known to her bought
the mulgeni right in the court sale. The
file may be asked to report on the
point of limitation.

[illegible]
2/12
A 3.39

To AS(GL)

Draft submitted.

[illegible]
9/3
A 9/3

4/3/39

Dasuedas Bds refce B.77.7/38-2 dt 14.3
Transfer order

The petn at pp 1-7 CF is against the Coll's order D. Dis 3140/38 dt 27.7.38 Cancelling the Revenue Divisional officer's order D. Dis 2359/37 dt 10.12.3 directing the assignment of a portion of the plot S. No 66/10 of Thokur Vge to the petr in modification of the Tal order D R 162/46 dt 15.2.37 assigning the whole plot measuring 67 cents to the counter petitioner.

S. No. 66/10, measuring 67 cents of Thokur Vge, Mangalore TK was assigned by the Talk of Mangalore to the counter petr. Babu Poojari The land forms kumaki to ~~the~~ holding S. No. 9/5 and is classed as dry. The Bds petr, who has secured the Mulgi right of S. No. 9/5, appealed to the R.D.O to cancel the assignment made by the Talk and requested that the whole land might be assigned to him. The R.D.O modified the Tal order and directed the assignment of 43 cents to the counter petitioner and the remaining extent of 24 cents to the petitioner. The extent of 43 cents

comprises the actual extent occupied by the the trees and the house of the counter petitioner Babu Poojari, the counter petr preferred a revision petition to the Collr who cancelled the R.D.O's order and directed that the whole land (6½ cents) should be given to him. The petr has now come up to the Board in revision. His contentions are -

1) That Babu Poojari (the counter petr.) occupied only in May or June 1936, the land in question which is kumaki to his land S.No. 9/5.

2) that he brought the encroachment of the counter-petr to the notice of the revenue authorities on 28-8-36 is within the statutory period of 6 months.

and (3) that the Collr's argument that the objn. to the encroachment ought to have been made by the mulgeni holder of S. No 9/5 and not by the petr who is only the mulgeni is not correct. He therefore requests that the whole land S No. 66/10 should be assigned to him.

Contentions (1) and (2) On 29.10.36, the Chairman recorded a statement from the counter petitioner that he had been in enjoyment of the plot since the hot season of 1936. In his subsequent statement

d/ 24·12·36, recorded by the R.I, he contended that he had occupied the plot in Feb 1936. In his report d/ 25·12·36, the K.I stated that the plot was encroached upon by the counter petr by constructing a house, digging a well and by planting 14 cocoanut trees about "10 months ago." He also recommended the assignment of the plot to Babu Poojari since he had made valuable improvements on the land

The Rd's petr purchased the mulgeni right over the land in court sale on 29·7·1935. The mulgenidar of the land is one Piad Souza Bai. The counter petr encroached upon the land in Feb 1936 and the land had been in his enjoyment for more than the statutory period of six months during which period no one objected to the encroachment. The mulgenidar has therefore lost her kumaki right over the land. The petr who is only the mulgar cannot have any preferential kumaki right over land, as he objected to the encroachment only on 28·8·36 i.e after a period of 7 months after the encroachment was made.

The petr's contentions (1) and (2) cannot therefore hold good.

Note 11 of 10-1 of S.R. p 54 of L.R.

Contention (3) - The petitioner is the mulga (owner) of the land. The mulgenidars are the permanent tenants who cultivate the lands and pay a fixed rent to the mulgar. So long as they pay rent, they cannot be evicted. Since kumaki lands are intended as an aid to the cultivation of the adjoining warg lands the mulgenidars or the permanent tenants have the preferential claim for such lands.

It is true that the mulgar has the next preferential claim to the kumaki land. In the present case the mulgenidarthi (female tenant) did not object to the encroachment made by the counter petitioner. The petr who is the mulgar of the land did not also object to the encroachment within the statutory period of 6 months. This allegation is not tenable, therefore, rejected. The petn may be dismissed.

25/7
28/7/77 The person having preference is the registered holder. Mr R. I has replied that the Petr. was not registered till the time of the assignment. It is a technical defect also. The Petn may be dismissed

28.3.7

17-1

Is there an independent evidence as to when the encroacher occupied the land? If not, there should be.

2. I do not think petr's ~~right~~ claim Kumaki right over S.No. 66/10 is genuine because there are holdings of other people between this & his own land S.No. 9/5. They are S.No. 8/1 & 66/11. Please send me the file in which we recommended to Govt a revision of DCO 6-20 & note whether these intervening holdings do not ~~debar~~ ~~the rights~~ prevent there being a kumaki right.

Sd
7/8

SECY.
7 - AUG 1939

To ASC(R)

Ref:- Member's remarks above

Para 1:- There is no ~~direct~~ independent evidence to show when the encroachi occupied the land. The only evidence available is the statement of the encroacher himself before the Shanbhogue and the R.I. From the R.I's report dy 25.12.36 it is observed that the encroached ~~has~~ planted 14 trees and that their age is 10 months. Hence the encroachment should have taken place in Feb 1936.

Para 2:- S.No. 8/1 has been purchase by the petr along with S.No. 9/5 in a court sale. S.No. 66/11 is a ~~path~~ footpath. 8/1 is a stony land, which has been [illegible] P.T.O.

The file relating to the revision of B.S.O No 15-40 is put up below. / [illegible]

M.'s remarks at p/12 NF and notes at pp/12-13 NF may be read

HN 8/8 B 11/8

A In the case of cocoanut plants the age of the plants is not known as the age of the transplantations. The seedlings are taken into the plantations at various times. There is no independent evidence of the age of the encroachment. Any evidence as to this distance of time may not be reliable.

B There is nothing to avoid B.S.O to indicate that intervening lands shall not Kumaki rights. In this case the intervening lands (plaintiff) also belongs to the claimants & the hundred yards limit would perhaps suggest that intervening lands do not shall not Kumaki.

HN 11/8/39

M=1

I should like S. to examine me.

2. The truth is that the persons registered holders lost their rights on 29/7/35 but endeavoured to harass the man who bought them in Court sale by encouraging co-per

occupy some of the Kumalia land. He did so & is now the object of pity because he has spent money on improving it & then his title is bad. The proper arrangement for settling this is for him to buy out the pet[b]s right. He has probably tried this but has not succeeded.

Probably the previous registered holders are encouraging him the squatting. The Revenue Officers have also encouraged him unduly. For instance

(1) the CdC is definitely wrong in denying the right to preference after the mulgeridar, per Para 10 of B[k]O 15 as modified by B[k]O 15-40 states that both have preference over others & in the note says that the mulgeridar has preference over the registered holder. (It is probable that the mulgeridar in this case is indifferent or on the side of the previous registered holders.)

/59 Book 68

(2) the R.O. pleased Solomon & divided the land between them, though without the same practical result that recorded Solomon A.J. would have it that the change of right not having been effected in their accounts pet[r] did not acquire his rights as superior as from 29/7/35. This seems to me bad, besides placing much power in the hands of the revenue officers. However the preference is probably for the owner not for the registered holder

pp 33-34 CF (r)

3. We are : ag concerned with facts + there are these pets had the right unless he lost it through not buying the c-pet's exemption & notice within six months of this happening. Should like S. to pay special attention to the evidence as to whether 6 months did or did not elapse.

157P

N.B. Pl like translation.

SECY:
15 AUG 1939

To AS(Ld).

The file is resubmitted with a translation of the statements given by the counter petitioners.

(Notes for 18NF may be read) 18/8 23/8 23839

S.

It is conceded by all the parties that the field in question S.No. 66 is kumiki to the kadim holding S.No. 9/5 belonging to the pet'r. The pet'r's right. i.e. ownership of S.No. 9/5 is not disputed. kumiki rights go with the kadim land to which they are attached. The fact that the transfer of registry had not been ordered in favour of the pet'r

~~Can~~ by the time the assignment was made cannot be used against him. No this technical point is not sustainable & is without any substance; it was not used either by the A.D.D. or by the Collr.

2. It is well established that, for assignment of kumaki lands the ~~kumaridar~~ mulgenidar has the first preference and, the ~~malawargdar (mulgenidar) i.e.~~ kadim mundar (wargdar) i.e. the owner of the ~~kumaki~~ kadim land, has the next best claim ~~for assignment of kumaki lands~~. It will be seen from the sketch at p.17 C.M. Of (P) that S.No.9/5 is kadim land which has kumaki rights over S.No.66/10 that the other adjoining lands are either assessed waste or kosagames i.e. later assignments, which are not entitled to kumaki rights. S.No.9/5 is the ~~kumaki~~ kadim land of the petitioner while S.Nos. 76/10, 8/1, 8/3 and 66/8 are his kosagames. If S.No.66/11 were poramboke land, kumaki rights would not extend across and beyond it to S.No.66/10, but actually 66/11 is assessed waste ~~by~~ through which a footp runs, and it is also partly the kumaki land ~~of~~ for the petitioner's land (S.No.9/5). It is indisputable, ~~therefore,~~ that S.No.66/10 is kumaki land of S.No.9/5.

Ex. 2-3 of (M)

3. The Mulgenidar of S.No.9/5 is Piad Souza Bai. S.Nos.76/11 and 66/9 are her kosagames. She ha obviously forfeited her ~~kumaki~~ kumaki rights ~~for first~~ of her claim

S.N:. 66/10

preference for the assignment of ~~lands~~ on account of her failure to bring the occupation of the kumaki lands to the notice of the authorities within a period ~~of~~ not exceeding 6 months. It is undeniable that the petitioner will be entitled ~~to~~ to assignment of kumaki lands unless he has forfeited his preferential ~~xx~~ claim by similar failure.

4. When the counter-petitioner Babu Poojari was first examined by the shanbogue on 29-10-36, he said clearly that he had occupied the kumaki land only during the preceding summer. But when he was examined later by the Rev.Inspr. on 24-12-36, he said that he ~~xxxxxxxxxxxxxxxxxxxxxx~~ had been occupying the plot from February 1936. It will be noticed that, in the first statement, he did not say anything about the mulgenidar having forfeited her kumaki rights because she neither had not objected within 6 months of the occupation nor did he say anything in the first statement about the transfer of registry not having been ordered in favour of the petitioner. The counter-petitioner does not appear to be a literate person as will be seen from the statements recorded from him by the Shanbogue and the Revenue Inspector. It is quite inconceivable, therefore, that such a person gave the name of the English month of February. It is, in my opinion, quite obvious that the second statement recorded by the R.I. was largely prompted by leading or suggestive questions put by the Rev. Inspr. As pointed out by the R.D.O., there is no allegation that the first statement was not correctly recorded by the shanbogue or that it was not voluntarily given and in that statement, he says quite definitely and clearly that it was in a summer month that his occupation commenced. Nobody would describe Feby.

Para 3 of (M)
I am surprised that the Collector does not admit his right as registered holder.
(B)

(B)

(B) (Q)
He has affixed his thumb impression

M. 16-17 CF.

as a summer month. The monsoon breaks in South Kanara in the first week of June. Only April and May would really be described as summer months. It is seen from the Rev.Inspector's report that it was one Bhoja Rao, the mulgenidar of S.No.66/8, who encouraged the counter-petitioner, Babu Poojari, to occupy the plot S.No.66/10 giving him to understand that the plot was included in his (Bhoja Rao's) mulgeni lease. It was brought to the Collector's notice that, in the statement given by Bhoja Rao before the shanbogue, he, mentioned that ~~his~~ Babu Pujari's occupation had commenced during ~~the preceding last season~~ hot season. When the mulgenidar, Piad Souza Bai, was examined on 15-12-36, she said that Babu Poojari's occupation had commenced about 4 or 5 months previously. When the shanbogue examined the petitioner's brother on 19-10-1936, the latter stated that the encroachment had been made 4 months previously, i.e. in about June 1936. In his application dated 28-8-1936 in which the petitioner brought the occupation to the notice of the authorities and claimed the land for himself, he stated that the occupation commenced about a month previously, though, in his petition to the Board, he is perhaps more truthful when he says that the occupation had commenced about 3 or 4 months before he objected. In my opinion, the evidence makes it quite clear that the occupation of the plot by Babu Poojari did not commence earlier than April 1936 and that, as the petitioner brought the occupation to the notice of the authorities within 6 months thereafter, he did not forfeit his preferential claim for the land. The Rev.Inspector's statement that the occupation had commenced about 10 months before 24-12-36 was, I think, based only on the improved version which was recorded from Babu Poojari on that date. As the petitioner's objection petition was dated 28-8-1936, they had to go back to a month

p.56 of (Q)

A 1 p = N.F. of (X)

B at p. 4 N.F. of (X)

C at p. 3 N.F. of (X)

D at p. 3 N.F. of (X)

Land

p 3 C.F.

X

p. 55 of (Q)

more than 6 months earlier and, therefore, pitched upon February. The Rev.Inspector could ~~well have~~ not have determined, by looking at the ~~land~~ coconut plants or the walls enclosing the ~~land~~ coconut land or the well whether they were 8 months old or 10 months old on the date when he recorded the counter-petitioner's statement. The Rev.Inspector put forward the ~~strange~~ extraordinary proposition that the mulgenidar had no right over the kumaki land. In his first draft of para 2 of his order, the Collr. inserted a statement to the effect that the petitioner also had apparently lost his kumaki privileges, on account of his failure to report the occupation within 6 months but his office stated dogmatically that the petitioner had no kumaki rights over the plot and that, therefore, it was unnecessary to say anything about his rights being forfeited! In his first note dated 13-6-1938, the H.S. gently suggested that one of the points for consideration was whether the petitioner before the Board and (the ~~xxx~~ counter-petitioner before the Collr.) had forfeited his kumaki claims. However, in his final note, the Huzur Sarishtadar not only approved the wrong and misleading note of the clerk ~~and~~ but added the ~~inaccurate~~ misleading comment that the petitioner had come into the field merely as an applicant for the land, ~~xxxxx~~, i.e., presumably, just like a stranger, without any kumaki rights. The Huzur Sarishtadar went so far as to suggest that the petitioner was incidentally the mulgar (owner) ~~only the mulgenidar~~ of the adjoining property!

The kumaki rules of South Kanara are based on considerations of equity and on long established custom. The Collr's order is opposed to these rules which have been incorporated in the B.S.D. The Board may, therefore, hold that the Collr acted in excess of his authority and that his ~~Collector's~~ order was grossly inequitable, and accordingly set ~~aside~~ it aside and direct the assignment of the whole land to the petitioner. The counter-petitioner has enclosed the whole of the plot and carried out improvements in it. There is, therefore, no room

for compromise such as that which was attempted by the R.D.O., ~~The [illegible] letter~~ Either ~~[illegible]~~ the petitioner had forfeited his preferential claim for the land or he had not ~~forfeited~~. If, as the evidence has established, he had not forfeited his claim, he ought to get the whole of the land.

For orders.

S
15-5-40

From p. 13 N.

17.2

This is not a case for revision without notice to the c-petr. Have a notice served on him stating the case and calling on him to show cause to the Collr. Ask the Collr to send the c-petr's reply with his comments thereon. I am surprised that the Collr should say or act on the supposition, that the petr had no homestead right!

S
17/5

Draft to me very urgent.
S
20/5/40

To Addn,

S
Addn,

Draft Subtd.

hn
23/5
28/5

28.5.

Issue very urgent
S.
S
27/5/40.

B.3354. From The Collector of S. Kanara dt/ 24.7.40

The Coll's report is in reply to the

hp 1-57 Cf | Bds ref dt/ 27.5.40. The written representation

of the counter petr is at pp 5-59 Cf.

p 56 Cf | The counter-petn states that

the villagers of his district know only of two

seasons viz., rainy season (June to Oct) and

p 52 (51) F (Tr. 20) 17 | other than the rainy season, that he might

have said before the R.D. on 24.12.36 a

month in 'Tulu' corresponding to the month

of February and that the evidences given by

Mad Souza Bei and the petr's brother

p 53 (58) F (Tr.) | should not be considered as they are interest

parties. He also says that he has constructed a big

tiled house costing about Rs 650/-, a well

costing about Rs 150/- and made some

other improvements worth about Rs 250/- in

the land. He therefore requests that the Coll

order may be confirmed.

p 57 Cf | The coll reports that the

summer season lasts for 4 months from

Feb to May and that the C.petn's argument

that Feb is a summer month, cannot be

said to be altogether without point.

For order.

hov 5/8

KJ 6/8

Note by A.S.(L.R.)

Note by A.S.(L.R.)

The petitioner says that he objected to the occupation on 28-8-36 and that this is within 6 months of the occupation. The counter-petitioner says he occupied it in ~~February~~ summer 1936.

p 33 (L.R.)
p 7 C.F. (para 6)

X - p.18 n.f. - Secretary has observed that, in his opinion, the evidence is quite clear that the occupation of counter-petitioner did not begin earlier than April 1936 and that the month of February had been pitched upon to make it appear that objection had not been taken in time.

I adhere to this opinion

In view of the detailed reasons given by Secretary, the explanation that summer lasts from February to May cannot help the counter-petitioner very much.

p 17 N.F. (para 4)

The counter-petitioner ~~xxxxx~~ has already constructed a house and a well. He will have to give up these.

The R.D.O. stated on 10-12-37 that the value of the house would be Rs.75/- and the well Rs.8/-.

p 17 C.F.
p 19 C.F.

The counter-petitioner now says she has put up a tiled building worth Rs.650/-, ~~and~~ that the well costs about Rs.150/- and that there are other improvements worth about Rs 250/-.

p 58 C.F. (para 11)

Evidently, a gross exaggeration

p 5 n.f. (X)

The Collector's order may be ~~xxxx~~ set aside and the land (S.F.66/10) assigned to the petitioner who has kumaki privileges. Before this is done, the Collr. may be asked to report the value of the building and well.

X

SECY. 26 AUG 1940

See p. 21 n.f.

18
22.8.40

Through S.

J. 26/8

M2

S

X at p. 22 N.F may be appd.

The C.P. seems to have plenty of people to advise him to develop his story. The question of possible hardship to the C.P. should not, I in my opinion, be allowed to affect the decision in a case like this where a stranger has trespassed into kumaki land.

M/1

(B)

In his first statement before the karnam, the C.P. said that he had no objn to the land being assigned to the petr with whom he was evidently prepared to come to terms & be a tenant under him.

6/1 The petn may be allowed

29-8-40

on p. 21 N.F

N. 2. 8/9

SECY.
9-SEP 1940

Draft issue

To ASFCA

ASFCA

Draft settld.
Appr as revised

18/18.9

hw
14/9
16/9
18/9

Bill No. 2562 dated 19-9-40

Single Member ✓
~~Full Board~~.

I.A.	A.D.S. & L.R.	Asst. Secretary. L.R.	Sett.	Sep Rev.	C.W.	Jt. Secy.	Secy.	E-4	E-3	E-2	E-1
							✓			✓	

1 Open file seen by ✓

2. Final draft seen by. ✓

3. Now circulated to

4. Initials. ~~HW~~ HW 22/11

Passed for record.

~~Secretary.~~
~~Joint Secretary~~

~~A.S. (C.W.)~~

A.S. (L.R.) 3/4 HW 22/11/40

~~A.S. (Sett.)~~

A.S. (Excise)

A.D.S. & L.R.

I.A. HW 16/11

Note:- Entries not required to be scored out.